

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SIDNEY KEYS,)	
)	
Plaintiff,)	
)	
v.)	No. 4:10CV869 HEA
)	
PARKWAY SCHOOL DISTRICT,)	
)	
Defendant.)	

OPINION, MEMORANDUM AND ORDER

This matter is before the Court upon the motion of Sidney Keys for leave to commence this action without prepayment of the filing fee pursuant to 28 U.S.C. § 1915. Upon consideration of the financial information provided with the motion, the Court finds that plaintiff is financially unable to pay any portion of the filing fee. As a result, plaintiff will be granted leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Additionally, the Court has reviewed the complaint and will dismiss it pursuant to 28 U.S.C. § 1915(e)(2)(B).

28 U.S.C. § 1915(e)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court must dismiss a complaint filed in forma pauperis if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief. An action is frivolous if it “lacks an arguable basis in either law or fact.”

Neitzke v. Williams, 490 U.S. 319, 328 (1989); *Denton v. Hernandez*, 112 S. Ct. 1728, 1733 (1992). An action is malicious if it is undertaken for the purpose of harassing the named defendants and not for the purpose of vindicating a cognizable right. *Spencer v. Rhodes*, 656 F. Supp. 458, 461-63 (E.D.N.C. 1987), *aff'd* 826 F.2d 1059 (4th Cir. 1987). A complaint fails to state a claim if it does not plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1974 (2007).

The Complaint

Plaintiff brings this action on behalf of his son under 42 U.S.C. § 1983 against the Parkway School District. Plaintiff alleges that his son was placed in a small room, was not allowed to go to the restroom, and was told to leave a game during recess. Plaintiff further alleges that his son was handcuffed by police and school officials during that same year. Plaintiff seeks treatment for his son plus money damages.

Discussion

The complaint must be dismissed because plaintiff cannot bring this action on behalf of his son. 28 U.S.C. § 1654.

Furthermore, plaintiff’s claim against defendant is legally frivolous because school districts are not suable entities. *Ketchum v. City of West Memphis, Ark.*, 974 F.2d 81, 81 (8th Cir. 1992) (departments or subdivisions of local government are “not

juridical entities suable as such.”); *Lucero v. Detroit Public Schools*, 160 F. Supp.2d 767, 780 (E.D. Mich. 2001) (school districts not suable). As a result, the complaint is legally frivolous.

Accordingly,

IT IS HEREBY ORDERED that plaintiff’s motion to proceed in forma pauperis [Doc. #2] is **GRANTED**.

IT IS FURTHER ORDERED that plaintiff’s motion to appoint counsel [Doc. #4] is **DENIED** as moot.

IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue upon the complaint because the complaint is legally frivolous or fails to state a claim upon which relief can be granted, or both.

An appropriate Order of Dismissal shall accompany this Memorandum and Order.

Dated this 13th day of May, 2010.



HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE